

June 4, 2002

To: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
Supervisor Yvonne Brathwaite Burke  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: David E. Janssen  
Chief Administrative Officer

## **STATE LEGISLATIVE UPDATE**

### **State Budget Conference Committee**

The State Budget Conference Committee will begin its negotiations on the 2002-03 spending plan on Monday, June 3, 2002. The conferees are: Senators Steve Peace (Chair), Dick Ackerman, and Wesley Chesbro and Assembly Members Jenny Oropeza, John Campbell and Darrell Steinberg.

### **CSAC Advocacy Activities**

Over the past several weeks, representatives from CSAC have visited Board offices individually to ask for support of a CSAC proposal on the issue of child support penalties. However, the details of the proposal and its impact are unknown.

The Governor's May Revision proposes to assess one-half of the child support penalty on counties (\$45 million) and their general funds. The County's share is estimated to be \$10 million. In addition, the Governor's proposal assumes that the Federal Government will reduce the State's penalty by one half. If this does not occur, counties would be liable for the original 50 percent of the penalty plus one hundred percent of the remainder, or 75 percent of the penalty in total.

In response, CSAC is developing a proposal to shift the cost of the penalty to county child support agencies, in effect paying the penalty with State funds. However, the CSAC proposal is not yet in print and it is unclear what its impact would be on child support collections, Federal matching funds, and staffing requirements. Child Support Services

Department Director, Philip Browning will prepare a report to the Board on the impact of CSAC's proposal when the document is available.

### **Pursuit of County Position**

**AB 1839 (Campbell)**, would limit the scope of indemnity provisions that local agencies can require of design professionals in agreements or contracts, such that public agencies would only be authorized to require design professionals to provide indemnification for the negligence or the wilful misconduct of the design professional.

County Counsel advises that, if enacted, AB 1839 would prohibit local agencies from requiring indemnification from architects/engineers for acts and omissions which do not rise to the level of negligence or wilful misconduct. With respect to design services contracts, the County generally does not limit indemnification to negligent or wilful acts but requires indemnification and defense for claims "arising out of the architect's or engineer's performance" and that AB 1839 would bar the County from seeking reimbursement for costs incurred due to errors that did not amount to negligence. Since construction litigation is very expensive to defend in terms of both attorneys fees and expert fees, in practice, this would likely require the County to prove that the architect or engineer was professionally negligent before the architect or engineer could be compelled to defend and indemnify the County. Because most lawsuits settle before trial, this legislation will inhibit settlements because it would remove the financial incentives for the architects/engineers to settle. By the time any trial to determine negligence would take place, the County would have already had to incur substantial costs to defend itself.

CAO Risk Management indicates that departments are currently advised to include an indemnification provision in service agreements that require the vendor to defend and indemnify the County for any and all liability arising from the vendor's acts or omissions and that this bill would require all public agencies to include a more limited indemnification provision in agreements executed with design professionals. Risk Management further indicates that if this bill becomes law, other professions and/or industries might seek similar relief, thus restricting a public agency's ability to shift certain liability costs (defense and indemnity) to these vendors.

**The Internal Services Department and the Department of Public Works concur in Risk Management's and County Counsel's review and recommend that the County oppose AB 1839 and we concur. Opposition is consistent with long-standing County policy to include these provisions in our contracts and to oppose legislation which reduces local control.** AB 1839 passed out of the Assembly on April 22 and is currently in the Senate Committee on the Judiciary, with no hearing date set. It is sponsored by the

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Consulting Engineers and Land Surveyors of California, the American Institute of Architects, California Council and the Structural Engineers Association of California and has the support of Blair, Church & Flynn, Chaudhary & Associates, Inc., Lane Engineers, Inc., and Sandis Humber Jones. It is opposed by the California Municipal Utilities Association, California State Association of Counties, League of California Cities, East Bay Municipal Utility District, and the City of Merced.

We will continue to keep you advised of any new developments.

DEJ:GK  
IGR:zo

c:     Executive Officer, Board of Supervisors  
       County Counsel  
       All Department Heads  
       Legislative Strategist  
       Local 660  
       Coalition of County Unions  
       California Contract Cities Association  
       Independent Cities Association  
       League of California Cities  
       City Managers Associations  
       Buddy Program Participants